

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

VELMA GRINSTEINER,

Debtor.

Case No. **05-60252-7**

**VERA PARKER, PERSONAL
REPRESENTATIVE OF THE ESTATE
OF JAMES NORMAN BATMAN,**

Plaintiff.

Adv No. **05-00051**

-vs-

VELMA GRINSTEINER,

Defendant.

MEMORANDUM of DECISION

At Butte in said District this 28th day of September, 2005.

The Plaintiff, Vera Parker, as personal representative of the Estate of James Norman Batman ("Parker"), filed a Complaint on May 3, 2005, objecting to the discharge of a debt owed by the Defendant, Velma Grinsteiner ("Debtor"), to James Norman Batman ("Batman") pursuant to 11 U.S.C. §§ 523(a)(5) and (a)(15). Debtor filed an Answer to Parker's Complaint on June 3, 2005, and following a pretrial scheduling conference held July 13, 2005,

and after due notice, a trial in this matter was held in Billings on August 23, 2005. Attorney Scott Green appeared at the trial on behalf of Parker and attorney Dane Schofield appeared on behalf of Debtor. Both Parker and Debtor testified and Exhibits 1, 2, 3 and D were admitted into evidence without objection. At the conclusion of the trial, the Court granted the parties ten days to file simultaneous post-trial briefs. Debtor tardily filed a post-trial brief on September 7, 2005, and Parker tardily filed a post-trial brief on September 13, 2005. This Memorandum of Decision sets forth the Court's findings of fact and conclusions of law.

BACKGROUND

Debtor and Batman were married on September 12, 1998. On August 30, 1999, Debtor and Batman executed a "Separation Agreement" that provides in relevant part:

RECITALS

* * *

Husband and Wife intend, and it is the purpose of this Separation Agreement, to make a settlement of certain claims that Wife may have against Husband and that Husband may have against Wife, for support and maintenance; to memorialize the separation of the parties; and to finalize their agreements as to the division of certain property hereinafter specified, owned by them or by either of them.

* * *

MAINTENANCE:

Husband shall not be required to pay the Wife maintenance, and the Wife shall not be required to pay the Husband maintenance.

PROPERTY SETTLEMENT:

In order to effect a division of the property, it is equitable that the property of the parties be divided as set forth on the attached Exhibit "A".

* * *

DEBTS:

Wife agrees to pay any debts that she has incurred, which include the following:

* * *

5. James Norman Batman (\$45,000.00 principal amount of loan to be put in promissory note and secured with second mortgage on business property known as Vel's Kitchen).

Debtor's and Batman's marriage was dissolved pursuant to Findings of Fact, Conclusions of Law & Decree of Dissolution of Marriage ("Decree of Dissolution"), signed August 31, 1999, and entered September 2, 1999. The Decree of Dissolution specifically incorporates the terms and conditions of the August 30, 1999, Separation Agreement:

The Separation Agreement, dated the 30th day of August, 1999, entered into between the parties settling the property rights of the respective parties, the payment of debts, and other marital rights and obligations shall be approved as if the terms of said Separation Agreement were set forth in full herein.

In accordance with the Separation Agreement, Debtor executed an Installment Note in favor of Batman on August 30, 1999, wherein Debtor agreed to pay Batman the sum of \$45,000.00 at the rate of 6% per annum with monthly payments of \$322.39 commencing October 1, 2002. The note came about supposedly because Batman performed construction work for Debtor at Vel's Kitchen, a business owned and operated by Debtor. Debtor has never made a payment on the Installment Note, but Vel's Kitchen, the property that was to serve as collateral for the Installment Note, was foreclosed by the first lien position creditor. Batman did not receive any money from the foreclosure. Notwithstanding, Batman did not make any demand for payment on the Installment Note until after Debtor sent Batman a

demand letter asking him to remove a trailer from her property, which demand was made approximately two years after entry of the Decree of Dissolution.

Debtor testified that the Installment Note was never intended to serve as maintenance, alimony or support. Debtor also maintains that Batman is indebted to her for the approximate sum of \$7,800.00 for allowing Batman to leave his trailer parked on Debtor's property.

With regard to Debtor's income and expenses, Debtor testified that her monthly income exceeds her monthly expenses by the sum of \$62.00 per month. Debtor, however, clarified that she does not spend \$150.00 per month on recreation as provided in her Schedule J. Even though Debtor spends something less than \$150.00 per month on recreation, Debtor's medical expenses exceed the monthly medical expense budgeted by Debtor on Schedule J because Debtor was recently diagnosed with cancer and is contemplating cancer surgery.

Parker married Batman on September 22, 2004. Batman, however, was killed shortly thereafter in an accident on October 12, 2004. Parker is the personal representative of Batman's estate. Parker received a \$25,000.00 settlement following the death of Batman, but after attorney's fees and funeral expenses, Parker netted roughly \$12,000.00. Parker is a children's therapist and earns approximately \$2,800.00 per month. However, after Parker pays her business expenses, Parker takes home about \$800.00 to \$1,000.00 per month.

STANDARD of REVIEW

The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding to determine the dischargeability of a particular debt under 28 U.S.C. § 157(b)(2)(I). It is well-settled that the Bankruptcy Code's central purpose is to provide a fresh start to the honest but unfortunate debtor. *See Grogan v. Garner*, 498 U.S.

279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). However, under certain circumstances, a creditor may seek to except from a debtor's discharge certain debts. *See* 11 U.S.C. §§ 523(a). Nevertheless, consistent with effectuating the underlying purposes of the Bankruptcy Code, exceptions to discharge under §§ 523 are to be narrowly construed. *See Snoke v. Riso (In re Riso)*, 978 F.2d 1151, 1154 (9th Cir. 1992).

DISCUSSION

Parker conceded at the hearing that the Installment Note was not alimony, maintenance or support, either for herself or Batman but rather, was “just the money that he gave to the business.” Such testimony is consistent with the express language of the Separation Agreement that specifically provides that “Husband shall not be required to pay the Wife maintenance, and the Wife shall not be required to pay the Husband maintenance.” The fact that neither Debtor nor Batman were required to pay maintenance to the other spouse is perhaps partially reflective of the fact that the parties were married less than one year.

Given the foregoing concession, the Court’s analysis will focus solely on 11 U.S.C. § 523(a)(15), which reads:

(a) A discharge under section 727, 1141, 1228(a) 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless--

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures

necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor[.]

The two exceptions to discharge in § 523(a)(15)(A) & (B) are offered in the disjunctive. If either exception applies, then the debt is dischargeable. *In re Rostocki*, 18 Mont. B.R. 117, 126 (Bankr. D. Mont. 2000); *Eastman v. Kirkland*, 17 Mont. B.R. 535, 541 (Bankr. D. Mont. 1999); *Smith*, 205 B.R. at 616.

The § 523(a)(15) discharge exception was added by the Bankruptcy Reform Act of 1994. *Woodruff, O'Hair & Posner, Inc. v. Smith (In re Smith)*, 205 B.R. 612, 615 (Bankr. E.D. Cal. 1997). Also, notwithstanding the general burden under 11 U.S.C. § 523(a), once a creditor shows that an obligation was incurred in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, the burden then shifts to the debtor to prove either (1) an inability to pay the debts under § 523(a)(15)(A); or (2) that payment of such obligations would create a greater detriment on the debtor than nonpayment would create on the spouse, former spouse or child of the debtor – the detriment test under § 523(a)(15)(B). *In re Myrvang*, 232 F.3d 1116, 1120 (9th Cir. 2000); *Jodoin*, 209 B.R. 132, 141 (9th Cir. BAP 1997); *Fitzsimonds v. Haines (In re Haines)*, 210 B.R. 586, 591 (Bankr. S.D. Cal. 1997); *Bodily v. Morris (In re Morris)*, 193 B.R. 949, 952 (Bankr. S.D. Cal. 1996); *McSweyn v. Smith (In re Smith)*, 16 Mont. B.R. 84, 88-89 (Bankr. D. Mont. 1997).

The legislative history explains the reasons for adding the exceptions of § 523(a)(15)

based upon “hold harmless” and property settlement obligations:

. . . The nondebtor spouse may be saddled with substantial debt and little or no alimony or support. This subsection will make such obligations nondischargeable in cases where the debtor has the ability to pay them and the detriment to the nondebtor spouse from their nonpayment outweighs the benefit to the debtor of discharging such debts. In other words, the debt will remain dischargeable if paying the debt would reduce the debtor’s income below that necessary for the support of the debtor and the debtor’s dependents. The Committee believes that payment of support needs must take precedence over property settlement debts. The debt will also be discharged if the benefit to the debtor of discharging it outweighs the harm to the obligee. For example, if a nondebtor spouse would suffer little detriment from the debtor’s nonpayment of an obligation required to be paid under a hold harmless agreement (perhaps because it could not be collected from the nondebtor spouse or because the nondebtor spouse could easily pay it) the obligation would be discharged. The benefits of the debtor’s discharge should be sacrificed only if there would be substantial detriment to the nondebtor spouse that outweighs the debtor’s need for a fresh start.

. . . .

The exception applies only to debts incurred in a divorce or separation that are owed to a spouse or former spouse, and can be asserted only by the other party to the divorce or separation. . . . It is only the obligation owed to the spouse or former spouse—an obligation to hold the spouse or former spouse harmless—which is within the scope of this section. See *MacDonald v. MacDonald (In re MacDonald)*, 69 B.R. 259, 278 (Bankr. D.N.J. 1986).

140 Cong. Rec. H10752, H10770 (daily ed. October 1994) (section-by-section description) as quoted in 4 L. KING, COLLIER ON BANKRUPTCY, ¶ 523.21, p.532-118 (15th ed. rev.).

The question in the case *sub judice* is whether the estate of Debtor’s former spouse is entitled to utilize § 523(a)(15) to except a debt from discharge. After reviewing the record, the Court finds that Parker does not have standing to bring an action under § 523(a)(15).

In *In re Bryant*, 260 B.R. 839 (Bankr. W.D.Ky. 2001), the Bankruptcy Court for the Western District of Kentucky was presented with a factual situation that is identical to the instant case. In a very thorough and well-reasoned decision, Judge Roberts concluded that

granting standing to the decedent's "estate would be inconsistent with both the plain meaning and legislative intent of § 523(a)(15)."¹ *Id.* at 848. In *Bryant*, Judge Roberts reasoned:

The Court notes a number of decisions allowing executors or administrators of decedents' estates to file non-dischargeability actions under other subsections of 11 U.S.C. § 523. For instance, an executor may bring an action on behalf of a decedent under § 523(a)(6) to declare a civil judgment for wrongful death or negligent conduct resulting in death non-dischargeable as willful and malicious misconduct. *Fezler v. Davis (In re Davis)*, 194 F.3d 570 (5th Cir.1999); *Nelson v. Seaton (In re Seaton)*, 98 B.R. 419 (Bankr.C.D.Ill.1989); *Clair v. Oakes (In re Oakes)*, 24 B.R. 766 (Bankr.N.D.Ohio 1982). The executor of a Creditor's estate, who has obtained a civil judgment on behalf of the estate, may file a complaint alleging actual fraud under 11 U.S.C. § 523(a)(2). *LeDonne v. Lasich (In re Lasich)*, 24 B.R. 923 (W.D.Pa.1982) (debt found nondischargeable under § 523(a)(2)).

* * *

In *LeRoy [The Law Firm of Wendy R. Morgan v. LeRoy (In re LeRoy)*, 251 B.R. 490 (Bankr. N.D.Ill. 2000)], the Court said that the language of § 523(a)(15) does not place any limitation on who may bring an action. The Court noted that the restrictive language of § 523(a)(5) has been expansively construed by the Seventh Circuit to confer standing on attorneys. *In re Rios*, 901 F.2d 71, 72 (7th Cir.1990). Therefore, the *LeRoy* Court found that § 523(a)(15) should be similarly construed to confer standing on attorneys who seek to have attorneys fees excepted from discharge. *LeRoy*, 251 B.R. at 506.

The more well-reasoned opinions hold that only a spouse, former spouse or child of the Debtor has standing to assert a claim under § 523(a)(15). See *Brian M. Urban Co., L.P.A. v. Wenneman (In re Wenneman)*, 210 B.R. 115 (Bankr.N.D.Ohio 1997); *Woodruff, O'Hair & Posner, Inc. v. Smith (In re Smith)*, 205 B.R. 612 (Bankr.E.D.Cal.1997); *Abate v. Beach (In re Beach)*, 203 B.R. 676 (Bankr.N.D.Ill.1997); *Woloshin, Tenenbaum & Natalie, P.A. v. Harris (In re Harris)*, 203 B.R. 558 (Bankr.D.Del.1996); *Douglas v. Douglas (In re Douglas)*, 202 B.R. 961 (Bankr.S.D.Ill.1996); *Barstow v. Finaly (In re Finaly)*, 190 B.R. 312 (Bankr.S.D.Ohio 1995); *Dressler v. Dressler (In re Dressler)*, 194 B.R. 290 (Bankr.D.R.I.1996). Cf. *Dean v. Brunsting (In re Dean)*, 231 B.R. 19 (Bankr.W.D.N.Y.1999) (Debtor's divorce attorney has no standing under §

¹ Judge Roberts appropriately acknowledges that the outcome might be different if minor children of the deceased ex-spouse were included in the decedent's estate.

523(a)(15) because the debt is not owed to a spouse or former spouse but is a contractual obligation between Debtor and the attorney).

In *Finally*, the Court relied on the legislative history in finding that only debts to a spouse or former spouse may be excepted from discharge under § 523(a)(15). Since the debt in that case was owed to the parents of the Debtor's ex-spouse, it could not be excepted from discharge. Further, the Court noted that the parents to whom the debt was owed had no standing as third parties to file a complaint under § 523(a)(15). 190 B.R. at 315. The Court also relied on the general rule that exceptions to discharge are to be narrowly construed in favor of the Debtor. *Id.* (citing *Brown v. Felsen*, 442 U.S. 127, 128, 99 S.Ct. 2205, 2207, 60 L.Ed.2d 767 (1979)).

An analysis of § 523(a)(15)'s legislative history is more fully flushed out in the *Harris*, *Beach* and *Smith* cases. In *Harris*, the Court stated the general rule of statutory construction--if a statute is plain and unambiguous on its face, that meaning controls. 203 B.R. at 559 (citing *Demarest v. Manspeaker*, 498 U.S. 184, 190, 111 S.Ct. 599, 112 L.Ed.2d 608 (1991)). However, the Court found that in interpreting § 523(a)(15), the legislative intent should control, as this intent was not clearly expressed in the statute. The Court noted that this is one of those rare cases where "the literal application of a statute will produce a result demonstrably at odds with the intentions of the drafter." *Id.* (citing *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989)).

[Section] 523(a)(15) was introduced in Congress as part of H.R. 4711, the Spousal Equity in Bankruptcy Amendments of 1994, and was sponsored by Congresswoman Louise M. Slaughter. *Harris*, 203 B.R. at 560 (citing 140 Cong. Rec. H10773) (daily ed. Oct. 4, 1994) (statement of Rep. Slaughter). The bill's primary intent was to remedy inequities in the bankruptcy law that were perceived as adversely affecting the rights of former spouses and children of Debtors under then existing bankruptcy law. Henry J. Sommer, Margaret Dee McGarrity, and Lawrence P. King, *Collier Family Law and the Bankruptcy Code*, ¶ 6.07A[1] (2000). Based on this history, the *Harris* Court concluded that the intended scope of § 523(a)(15) was limited to debts owed directly to the Debtor's spouse or former spouse, and therefore only a spouse or former spouse has standing to bring an action under § 523(a)(15). 203 B.R. at 561. *Accord, Beach*, 203 B.R. at 678-80. The *Smith* Court first noted its agreement with the ruling that, according to the legislative history, only a spouse, former spouse or child of the Debtor has standing under § 523(a)(15). 205 B.R. at 616. However, the Court then stated its opinion that the statutory language of § 523(a)(15) is not in conflict with the legislative history because the second exception to discharge under § 523(a)(15) effectively limits standing to a spouse, former spouse or child of the debtor anyway:

If a debt is owed to someone other than a spouse, former spouse, or child of the debtor, discharge of the debt will always result in a benefit to a debtor that is greater than the detriment to his or her spouse, former spouse or child. This is true because, in this circumstance, the benefit to a debtor is necessarily positive, and the detriment to the spouse, former spouse, or child is necessarily zero.

Id. Two of the cases holding that a third party has standing to state a claim under subsection 523(a)(15) find that under the § 523(a)(15)(B) test, discharge of attorneys fees owed by the Debtor will always result in a benefit to the Debtor that outweighs the detrimental consequences of discharge to a spouse, former spouse or child of the Debtor. *LeRoy*, 251 B.R. at 506-08; *Dean*, 231 B.R. at 21-22. In *Soderlund*, however, the Court found that Debtor's divorce attorney had standing under § 523(a)(15) because its two subsections are in the disjunctive. While (B) requires a comparison of the financial standing of the Debtor and his or her former spouse, (A) does not. Therefore, the Court in that case ruled that if the Debtor is unable to pay the debt, the debt is discharged. 197 B.R. at 747.

* * *

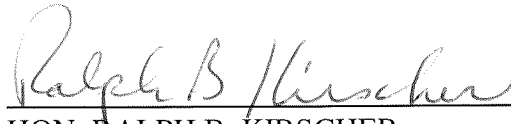
While Plaintiff may be the real party in interest pursuant to Federal Rule of Civil Procedure 17, the legislative history of § 523(a)(15) strongly suggests that only a living spouse, former spouse or child of the Debtor has standing to sue under § 523(a)(15). The whole purpose of this provision is to protect a former spouse or child from having to assume marital debts discharged by a Debtor in bankruptcy. Since the former spouse in this case is deceased, the Court has no interest in protecting his estate, as no detriment can occur to the deceased party if the debt is discharged.

As noted earlier, the above reasoning is persuasive and comports with the legislative intent with respect to 11 U.S.C. § 523(a)(15). The Court therefore concludes that Parker does not have standing to bring an action under 11 U.S.C. § 523(a)(15) as Parker is not a spouse, former spouse or child of Debtor's. In accordance with the foregoing,

IT IS ORDERED that the Court will enter a separate Judgment in favor of the Debtor/Defendant, Velma Grinsteiner, and against the Plaintiff, Vera Parker, Personal Representative of the Estate of James Norman Batman; and the Complaint filed by the

Plaintiff on May 3, 2005, is dismissed with prejudice.

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", written over a horizontal line.

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana